

**STATE BOARD OF EQUALIZATION**

1020 N STREET, SACRAMENTO, CALIFORNIA
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916/445-6493

May 11, 1984

Dr. [B]
Medical Director
[V]
XXX --- ---
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Dear Dr. [B]:

Your letter of April 6, 1984 has been referred to me for reply. You request our opinion as to the correct application of tax to the sale of "Modifit" a nutritionally complete formula.

Modifit consists primarily of non-fat dry milk solids, fructose, calcium caseinate, cocoa, soybean oil, maltodextrin, egg white solids, and a number of vitamins and minerals. This product is sold in powder or granular form with the recommended daily intake providing the user with 800 calories, 70 grams protein, and 100 grams carbohydrate, plus 100 percent or more of the U.S. R.D.A. of essential vitamins and minerals.

California Sales and Use Tax Law imposes a tax on the sale or use of tangible personal property in this state unless such sale or use is otherwise exempt from taxation. Pursuant to Section 6359 of the Revenue and Taxation Code and Sales and Use Tax Regulation 1602, tax does not apply to the sale or use of "food products" for human consumption. As provided in Regulation 1602(a)(5), complete dietary foods providing the user in the recommended daily dosage with substantial amounts of vitamins, proteins, minerals, and adequate caloric intake qualify as exempt food products. In our view, Modifit is a complete dietary food. Therefore, the sale or use of this product is not subject to tax.

If you have any further questions, please write this office.

Very truly yours,

Charles J. Graziano
Tax Counsel

CJG:ba